IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1914 of 2004

UNION OF INDIA
V/S
M/S SOOD ENTERPRISES & ORS

Mr. JAGDISH VYAS, for the appellant / petitioner

Date of Order : 1.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the appellant, and perused the impugned judgments.

Two submissions have been made by the learned counsel. The first is that the arbitrator has erred in awarding the extra costs of the transformer, which was installed, inasmuch as, the contract was for supplying aluminum wire bound transformer, as against which aluminum foil bound transformer was installed. The transformer with aluminum foil bound transformer technology was costlier, and according to terms of contract, it was never agreed that the contractor would be entitled to such difference of the price.

The arbitrator has found that from the correspondence exchanged between the parties, it is clear that at the time of entering into the agreement, the technology of transformers available was only aluminum wire bound transformers, and not aluminum foil bound transformers, and since the appellant had approved the aluminum foil bound transformers only, and therefore, they are rightly held liable to pay the difference of the price.

The learned trial Court has found that the arbitrator has rightly held the appellant liable, as the amount was consequent upon the old technology having become obsolete, and improved technology having been invoked. Learned counsel was pointedly asked, as to under what part of the stipulations of the contract, the contractor was not entitled to be paid this amount, but learned counsel was unable to

point out any such stipulation. In that view of the matter, since it is clear on record that the amount had become payable to the contractor consequent upon the old technology having become obsolete, and improved technology was required to be invoked, apart from the fact that old technology transformers were not available, I do not find any error in the finding of the learned trial Court, upholding this item of award.

The other submission made is that the arbitrator has erred in awarding an amount of Rs.1,75,986/- for the increase in the price of the fuel. According to learned counsel, it was agreed between the Union of India on the one hand, and the association of the contractors on the other hand, and according to that agreement, a formula was evolved, as to how the increase in the price of fuel would be arrived at, and the payment was made to the contractor according to that formula, but the arbitrator has made the award, simply because in the contract, that formula could not be completely typed. According to learned counsel, this amounts to legal misconduct on the part of the arbitrator.

I have gone through the impugned order, and find that the learned arbitrator has assessed the price as per the formula mentioned in the agreement. Admittedly, the agreement was not got rectified by the appellant for correcting the mistake, if there was any, by resorting to appropriate legal proceedings for rectification of agreement. In that view of the matter, when the amount payable to the contractor could be arrived at on the basis of the formula as given in the contract, simply because a different amount could be arrived at if some more additions were to be made in the formula, which according to the appellant happened to be omitted, from being incorporated in the agreement, in my view, it cannot be said to be tantamounting to legal misconduct, in making the award without application of mind. In that view of the matter, I do not find any error in this finding either.

The appeal thus, has no force, and is dismissed summarily.

(N P GUPTA),J.

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